THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 18259 OF 2005

DATED: 19-08-2005

Between

M/s. Gopikrishna Granites India Limited,

Ramanthapur (Village), Yeldurthi Mandal,

Medak District, Andhra Pradesh.

..... PETITIONER

And

1. The Additional Commissioner of Commercial Tax (Legal),

3rd Floor, o/o. Commission of Commercial Taxes,

Opp. Gandhi Bhavan, Nampally, Hyderabad and others.

..... RESPONDENTS

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 18259 OF 2005

ORDER: (per Sri B. Sudershan Reddy, J)

We have heard the learned counsel for the petitioner and the learned Special Standing Counsel appearing for the Department.

We have made a critical assessment of the impugned order dated 08-07-2005 passed by the Additional Commissioner (CT) Legal, Office of the Commissioner of Commercial Taxes wherein the petitioner's stay application pending appeal has been rejected. We are constrained to observe that we have seen several orders passed by the appellate authority which are more or less couched in similar language after referring to the decisions of the apex Court in ***M/S EMPIRE INDUSTRIES LT. Vs. UNION OF INDIA*** and ***M/S. ASST. COLLECTOR OF CENTRAL EXCISE CHANDANNAGAR Vs. DUNLOP INDIA LTD***. The stay applications are being disposed of in a routine and mechanical manner.

It is needless to remind the appellate authority that appeal is a valuable right conferred upon an aggrieved person and each appeal is required to be disposed of on its own merits. Whether the facts and circumstances require the interference of

the appellate authority to grant stay of the impugned proceedings is required to be gone into by the appellate authority in accordance with the well-known principles of law. The facts in each case may be different and they are required to be taken into consideration even at the threshold. In the instant case, we find that the appellate authority did not properly appreciate the grounds raised in the appeal as well as the stay petition. No doubt, as pointed out by the learned Special Standing Counsel, the appellate authority summed up the proceedings of the revisional authority but had not expressed its own opinion in the matter.

In the circumstances, we find it difficult to sustain the order. The impugned order is accordingly set aside. The stay petition filed by the petitioner shall stand revived to its file for disposal in accordance with law and in the light of the observations made in this order.

We hope and trust that the appellate authority henceforth shall consider each application on its own merits and pass appropriate orders.

We may, however, hasten to clarify that we have not expressed any opinion as to whether the case on hand is a fit case for granting any stay as prayed for since the same is required to be gone into by the appellate authority.

That an appropriate order shall be passed by the respondent – appellate authority within three weeks from the date of receipt of a copy of this order, after providing an opportunity of being heard to the petitioner or its counsel.

The Writ Petition is accordingly allowed.

(B. Sudershan Reddy, J)

19..08..2005

(Ramesh Ranganathan, J)

Note: Furnish Copy by tomorrow.

B/O

ks